

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
In re:

M. Burton Marshall

Case No. 23-60263-PGR  
Chapter 11

\_\_\_\_\_  
Debtor.

**SUPPLEMENTAL CERTIFICATE OF SERVICE**

I, Monica Arellano, depose and say that I am employed by Stretto, the claims & noticing agent for the Debtor in the above-captioned case.

On March 6, 2024, Stretto in accordance with USPS forwarding instructions served the following document via first-class mail on the service list attached hereto as **Exhibit A**:

- **Notes to IRS Form 1099-INT** (attached hereto as **Exhibit B**)

Furthermore, on or before March 12, 2024, Stretto in accordance with USPS forwarding instructions served the following documents via first-class mail on the service list attached hereto as **Exhibit C**:

- **Order and Notice of Hearing on Disclosure Statement** (Docket No. 321)
- **Notice of Hearing on Motion for Entry of an Order Approving (I) Disclosure Statement, (II) Form of and Manner of Notices, (III) Form of Ballots and (IV) Solicitation Materials and Solicitation Procedures** (Docket No. 323)

Dated: March 19, 2024

/s/ Monica Arellano  
Monica Arellano  
STRETTO  
410 Exchange, Suite 100  
Irvine, CA 92602  
(800) 634-7734

## **Exhibit A**



**Exhibit A**

Served Via First-Class Mail

Name	Address	City	State	Zip
Joan C Matthews	610 Howell Brook Dr	New York	NY	10023-5860
Popek, Daniel A. and Diane M.	9448 Gold Mountain Dr	New York	NY	10023-5860

## **Exhibit B**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK**

**In re:**

**M. Burton Marshall**

**Case No. 23-60263 (PGR)**

**Notes to IRS Form 1099-INT**

**PURPOSE OF NOTES:** The purpose of these notes is to provide an explanation to noteholders, investors, and/or creditors of M. Burton Marshall as to why they received an IRS Form 1099-INT, what it means, and why it is consistent with Mr. Marshall's historical business practices and compliant with IRS rules and regulations.

**BACKGROUND:** On April 20, 2023 (the "Marshall Petition Date"), M. Burton Marshall ("Marshall" or the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Northern District of New York (the "Court"), which case is pending under Case No. 23-60263 (PGR) (the "Marshall Bankruptcy Case"). Prior to the Marshall Petition Date and for a period of decades, Marshall borrowed significant sums of money from individuals and others (each a "Noteholder") pursuant to promissory notes generally entitling Noteholders to interest typically at the rate of 8% per annum (this sometimes varied).

On June 27, 2023, the Office of the United States Trustee for the Northern District of New York (the "U.S. Trustee") filed a motion seeking appointment of a chapter 11 trustee pursuant to section 1104(a) of the Bankruptcy Code or, in the alternative, appointment of an examiner pursuant to section 1104(c) of the Bankruptcy Code (the "Motion to Appoint a Trustee"). On September 20, 2023, the Court granted the Motion to Appoint a Trustee and entered the Memorandum-Decision and Order Granting Motion to Appoint a Trustee. On September 21, 2023, the U.S. Trustee filed an application requesting the entry of an order approving the appointment of Fred Stevens as Chapter 11 Trustee (the "Trustee") and later that day the Court signed the Order Approving the United States Trustee's Appointment of Chapter 11 Trustee.

**MARSHALL'S MARCH 2023 DISTRIBUTION:** Prior to the Marshall Petition Date, in March of 2023, Marshall made cash payments to Noteholders equal to approximately 0.5% of the outstanding principal balance of Noteholders' promissory notes (the "2023 Distribution").

**THE TRUSTEE ISSUED A FORM 1099-INT TO NOTEHOLDERS:** The Trustee has issued a Form 1099-INT to each Noteholder in the amount of accrued but unpaid interest on the Noteholder's note ("Accrued Interest") up to the amount of the 2023 Distribution (plus any other distributions that Noteholder may have received in 2023). So, for example, if a Noteholder received a \$25,000 2023 Distribution and had \$8,000 in unpaid Accrued Interest on its note, the Trustee issued a Form 1099-INT to that Noteholder for interest income of \$8,000. Alternatively, if a Noteholder received a \$10,000 2023 Distribution and had \$15,000 in unpaid Accrued Interest on its note, the Trustee issued a Form 1099-INT to that Noteholder for interest income of only the \$10,000 actually paid.

**NOTEHOLDER’S FRUSTRATION:** Certain Noteholders have expressed their view that the entirety of the 2023 Distribution constituted a return of their principal investment and was not a payment on account of Accrued Interest. Thus, these Noteholders argue that the Trustee should not have issued any 1099-INT and that they should not have any taxable income on account of their receipt of the 2023 Distribution.

**SO WHY DID THE TRUSTEE ISSUE THE FORMS 1099-INT?:** The Trustee understands why Noteholders do not want to recognize taxable income on account of the 2023 Distribution when the entirety of each Noteholder’s claim is completely uncertain in the Marshall Bankruptcy Case. However, the Trustee was, in his view, compelled to issue the Forms 1099-INT to Noteholders on account of the 2023 Distribution for at least the following reasons:

1. **Legal Presumption.** The general rule is that voluntary partial payments made by a borrower to a creditor are, in the absence of any agreement between the parties, applied first to the outstanding interest and then to principal. See, e.g., Lackey v. Commissioner, T.C. Memo. 1977-213, 36 T.C.M. (CCH) 890. Here, the promissory notes issued by Marshall were silent on the application of payments and, subject to Noteholders’ right to disagree, the Trustee did not see anything else that evidenced the existence of an “agreement between the parties” as to the application of the 2023 Distribution.<sup>1</sup>
2. **Issuance is Consistent with Prior Business Practices.** Historically, when a Noteholder either deposited additional funds with Marshall, received a cash distribution (like the 2023 Distribution), or requested a statement on account, Marshall would calculate accrued interest and would issue a Form 1099-INT on account of that accrued interest by January 31 of the following year regardless of whether it was paid. This was not proper. Actually, Marshall should have issued a Form 1099-INT to each Noteholder each year on account of accrued interest, whether paid or not, regardless of whether there was a deposit, distribution, or request for a statement. Regardless, if there was a triggering event like a distribution, Marshall issued a Form 1099-INT to the Noteholder on account of accrued interest whether that interest was paid or not. The Trustee’s issuance of the Forms 1099-INT to Noteholders here is consistent with Marshall’s prior practices except that the Trustee’s Forms 1099-INT were capped at the actual amount of the cash distributions in 2023 (*i.e.*, none of the Trustee’s Forms 1099-INT included unpaid but accrued interest as Marshall’s historically would). Thus, the Trustee’s Forms 1099-INT reflected the same or less interest income than Marshall’s would have historically and, to the Trustee’s knowledge, Marshall’s historical practices in this regard were not challenged by any Noteholders.
3. **Penalties Warrant Taking Conservative Approach.** If the Trustee opted not to issue the Forms 1099-INT, he would be doing so without any legitimate legal justification to his

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<sup>1</sup> Some Noteholders have argued that the language contained within correspondence sent by Marshall with or at around the same time as the 2023 Distribution evidenced the intention that the distribution be deemed a return of principal. However, in the Trustee’s view: (i) the language of Marshall’s correspondence was ambiguous on this issue, at best; and (ii) one-sided correspondence from only one party would not constitute an “agreement between the parties” regardless of its contents.

knowledge. In fact, such a decision would be inconsistent with the advice the Trustee has received from his professionals and with the rules, regulations, and laws to which the Trustee has been made aware. Further, if the Trustee did not issue Forms 1099-INT and got it wrong, he could subject Marshall's bankruptcy estate and himself to penalties up to \$250 per failure, totaling approximately \$250,000, plus the professional fees associated with mounting any contest over the asserted failure by the Internal Revenue Service. See 26 U.S.C. §§ 6721 and 6722. The Trustee is unwilling to take this risk on behalf of Marshall's bankruptcy estate and believes that doing so would be a breach of his duties as set forth in 11 U.S.C. §§ 704 and 1106.

**NOTEHOLDERS HAVE A RIGHT TO DISAGREE:** Noteholders may disagree with the Trustee or that any portion of the 2023 Distribution constitutes interest income for any reason including that the Noteholder believes it had an agreement on principal application with Marshall, or under the open transaction doctrine (see, e.g., Burnet v. Logan, 283 U.S. 404 (1931); Parrish v. Commissioner, 168 F.3d 1098 (10<sup>th</sup> Cir. 1999); and McShain v. Commissioner of Internal Revenue, 71 T.C. 998, 1004 (1979)), or otherwise. Noteholders may also believe that they are entitled to other favorable tax treatment as a result of Marshall's conduct and any loss on their note, including entitlement to a theft loss deduction (see, e.g., 26 U.S.C. § 165(a); Edwards v. Bromberg, 232 F.2d 107, 110 (5<sup>th</sup> Cir. 1956); Berardo v. Commissioner, T.C. Memo. 1987-433). However, these disagreements and personal tax matters must be addressed by the Noteholder directly with the Internal Revenue Service, and/or state and local taxing authorities.

**THIS IS NOT TAX ADVICE. The Trustee cannot and is not providing Noteholders with tax advice and nothing herein should be construed as constituting tax advice.** These notes are intended only as an explanation for why the Trustee issued Forms 1099-INT to Noteholders in connection with the 2023 Distribution. Noteholders should consult their own tax professionals with respect to their rights to disagree with the Trustee on these matters, any right to claim that no portion of the 2023 Distribution constitutes taxable interest income, their ability, if any, to claim a theft loss, or with respect to any other personal tax reporting and payment obligations.

**ADDITIONAL INQUIRIES:** If Noteholders or their professionals have additional questions, comments or concerns regarding the Trustee's issuance of the Forms 1099-INT, or think that the calculation of accrued interest is mathematically incorrect, please submit those inquiries to [taxman@mbmarshall.com](mailto:taxman@mbmarshall.com) and the Trustee's professionals will address them promptly.

## **Exhibit C**



**Exhibit C**

Served Via First-Class Mail

Name	Attention	Address 1	Address 2	City	State	Zip
Alyson R. Casler		895 Babcock Hill Rd		New Hartford	NY	13413-4976
Amber J. Codioli		34 W Main St		Lexington	MA	02421-6348
Asma, Joan M.		20 E St N		Oriskany Fls	NY	13425-4056
Baddeley, Donna C.		15 Fennaway Grn		Hamilton	NY	13346-1217
Bailey, Michele W.		PO Box 1		New York	NY	10018-4799
Barbara J Wolicki		100 Flume Rd	Apt 122	Lynchburg	VA	24501-1432
Beverly G Sullivan		4975 Reservoir Rd		Hamilton	NY	13346-1225
Beverly Sullivan		4975 Reservoir Rd		Hamilton	NY	13346-1225
Brandon C Schwarting		6467 Keefe Rd		Pulaski	NY	13142-2595
Brian D Elledge		62 Stone Ave		Naples	FL	34103-2231
Brooke S Curtis		5500 Rottamore Rd		New York	NY	10017-4921
Carlson, Arthur L. III		1886 Massachusetts Ave		Syracuse	NY	13215-1824
Carney, Tyler J.		4949 State Route 31		Hamilton	NY	13346-2657
Caroline L. Dart		65 Lebanon St		Riverside	RI	02915-2566
Carolyn H Dearnaley		2767 Browning Dr		Ossining	NY	10562-3716
Cerio, Andrew J.		31 Burton St		Morrisville	NY	13408-1415
Charlotte H. Bristol		9 Center St	Apt 2	Gresham	OR	97030-3058
Chelsea M Kuss		11 Martin St	# 2	Rockville	MD	20850-1201
Cross, Ellen		9811 Skaneateles Tpke		New Hartford	NY	13413-4976
Cummings, Robin J.		4937 Seafoam Trl		Cazenovia	NY	13035-1312
Curtis V Kemp		139 Pheasants Run	Unit 3	Medford	MA	02155-4305
David Buterbaugh Revocable Trust	Attn: David D. Buterbaugh	37 W Pleasant St		Hamilton	NY	13346-2914
David Dorrance		2261 Church Rd		Beaumont	TX	77706-7764
David W Dinneen		101 Sitrin Ln		Hamilton	NY	13346-1009
Dennis H Lamunion		371 Conrad Dr		Victoria	TX	77901-4310
Dinneen, David W.		101 Sitrin Ln		Hamilton	NY	13346-3009
Edna M Krug		5947 Munz Rd		Albany	NY	12210-1301
Estate of Sandra L. Brunschmid	Attn: Dana Gorton	3237 State Highway 80		Brooklyn	NY	11211-6929
Estate of Sandra L. Brunschmid	Attn: Dana Gorton	3237 State Highway 80		Auburn	KY	42206-9141
Ford, Sara M.		3724 Cole St		Bradenton	FL	34211-1588
Fred Goldby		121 Washington St	# B	Cazenovia	NY	13035-1130
Gerald V Doroshenko		4399 Sanderson Rd	# B	Sherburne	NY	13460-4720
Gladys M Lamar		2618 Skyview St		Los Angeles	CA	90025-2627
Hayes, Michael T.		374 Waterlily Way		Hamilton	NY	13346-2714
Ian D. Camp		267 Rigi Ave		Raleigh	NC	27609-2655
Jack A Marti		815 Hyacinth Cir		Russellville	KY	42276-2118
Jack F.E. Murphy [Jack Murphy]		219 S 5th St	Unit 5	N Tonawanda	NY	14120-2352
Jacobs, Daniel W.		5748 S Stony Island Ave	Apt 5	Carmichael	CA	95608-6367
James I March		6270 E Hill Rd		Cazenovia	NY	13035-1145
Jared J. Dart		65 Lebanon St		Kansas City	MO	64109-8403

**Exhibit C**

Served Via First-Class Mail

Name	Attention	Address 1	Address 2	City	State	Zip
Jeffrey A Manwaring		134 Westbrook Hills Dr		Oneida	NY	13421-2006
Jeffrey Wheeler		6438 Paino Rd		Monrovia	CA	91016-8147
Jennifer Braman		5230 Pinehurst Ct		Great Falls	VA	22066-3222
Jennifer Goguen		6250 Betts Rd		Earlville	NY	13332-1928
Joan M Asma		20 E St N		N Hollywood	CA	91601-1992
Joan M Asma [John Asma/ Jon Asma]		20 E St N		Los Angeles	CA	90028-8514
JoAnn B. Cerra		84 W Main St	Apt 5	Ojai	CA	93023-2122
Johnathan M Duddleston		113 W Jenkins St	Apt 4	Miami	FL	33184-1115
Jordan A. Greenwich		50 Victor Mendon Rd		Norwich	NY	13815-3721
Joseph M. Capluzzi		1 Jane Lacey Dr	# 21V	Hubbardsville	NY	13355-1137
Katharine E Osgood		62 Stone Ave		Los Angeles	CA	90065-3440
Katie Osgood Photographers Inc		62 Stone Ave		New York	NY	10003-1776
Kelly E Taylor		205 N 9th St	Apt 7M	Canajoharie	NY	13317-3437
Kenneth G Valente		1775 E Palm Canyon Dr	Ste 110	Whitestown	IN	46075-0378
Kenneth M Moot		139 Jewell Rd		Farmington Hills	MI	48334-4523
Kristen K Menard		PO Box 141		Earlville	NY	13332-1901
Lamar, Gladys M.		2618 Skyview St		Youngstown	OH	44514-1639
Lana J Gardiner		243 Clemons Rd		Morrisville	NY	13408-1415
Maggie M Menard		118 Newbury Hollow Ln	Apt 7	Utica	NY	13502-2638
Manwaring, Colin C.		134 Westbrook Hills Dr		North Hills	CA	91343-3139
Manwaring, Tyler J.		27 Candlewyck Ln	# B	Morrisville	NY	13408-1415
Margaret M Earing		PO Box 46		Great Falls	VA	22066-3222
Marisol Fonseca Malavasi		9818 Burke Pond Ln		San Diego	CA	92122-5101
Mark C Walden		312 Seneca St		Key Biscayne	FL	33149-1827
Martin Braman		203 E Bremond St		Miami	FL	33131-3087
Martin J. Dawson		1106 State St	Apt 1	Oneida	NY	13421-2466
McClennen, Hannah N.		55 Watertown St	Unit 146	Norwich	NY	13815-1541
Michael J Volo		7733 W Keeney Rd		Batavia	NY	14020-3544
Michael T. Hayes & Candace L. Hayes		374 Waterlily Way		Ossining	NY	10562-3716
Michele W. Bailey		PO Box 1		New York	NY	10018-4799
Miller, Eldon J.		2512 Duncan Chapel Rd		Sherburne	NY	13460-0141
Morgan Biedermann		PO Box 942		Verona Beach	NY	13162-0046
Morris, James D. and Wendy S.		6825 Airport Rd		Norwich	NY	13815-2008
Moshure, Pamela P.		4937 Seafoam Trl		Visalia	CA	93292-2325
Murphy, Jack F. E.		219 S 5th St	Unit 5	Visalia	CA	93291-0010
Nakhimovsky, Sharon		108 Moore Dr		Frankfort	NY	13340-3903
Nicholas T Petroff		4549 Summerfields Rd		Munnsville	NY	13409-2210
Paul B Brouillette		27 Dove St		Venice	FL	34284-2024
Pohl, Andrew F. and Heather A.		1296 Wurlitzer Ct		Syracuse	NY	13210-4186
Randy S Fuess		PO Box 181		Albany	NY	12203-1764



### Exhibit C

Served Via First-Class Mail

Name	Attention	Address 1	Address 2	City	State	Zip
Rebecca E Wall		1536 S Bundy Dr	Apt 101	Manlius	NY	13104-1912
Rebekah P Mosby		PO Box 2024		Salinas	CA	93906-6012
Robert D Bond		12 Brown Ave		Novato	CA	94949-6294
Rodman, Troy J.		4 Lebanon Dr		Mendon	NY	14506-9727
Rosalie C Johnson		191 County Road 23		Canton	MI	48187-2451
Rosner Nocera Ragone LLP	Peter Ragone	33 Whitehall St	Ste 16	Milford	NY	13807-0072
Rosner Nocera Ragone LLP	Attn: Peter Ragone	33 Whitehall St	Ste 16	West Winfield	NY	13491-2218
Scott R. Bratt		101 Country Side Ln	Apt 108	Syracuse	NY	13215-1824
Sierra E Barker		43 1/2 Central Ave		Burbank	CA	91502-1835
Smalley, Alyssa B		2075 Langhorne Rd	Apt 79	Cazenovia	NY	13035-9766
Sullivan, Beverly G		4975 Reservoir Rd		Hamilton	NY	13346-2122
Tiffani Decker		2885 State Route 12		Tulsa	OK	74104-5647
Timothy Collins		22 Milford St	# 1	Vernon	NY	13476-3840
Tori Coles		83 Mitchell St		Brooklyn	NY	11201-5584
Troy J. Rodman [Troy Rodman]		4 Lebanon Dr		Bradenton	FL	34211-1588
Valente, Kenneth G		1775 E Palm Canyon Dr	Ste 110	Celina	OH	45822-7159
Vanderwey, Martha S		211 Castle Hill Rd		Oak Brook	IL	60523-3944
Warren M Bunn		PO Box 72		Manlius	NY	13104-2467
Wright Flood		93 N Park Place Blvd	Ste 101	Erieville	NY	13061-4106